

- (1) Whether claimant suffered accidental injury arising out of and in the course of her employment before or after July 1, 1993.
- (2) Whether claimant provided notice to respondent of her injury as required by K.S.A. 1992 Supp. 44-520 and, if not, whether respondent was prejudiced by this lack of notice.

- (3) What, if any, is the nature and extent of claimant's injury and/or disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein and, in addition, the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law.

Claimant's original E-1 filed in this matter alleged accidental injury arising out of and in the course of her employment with respondent, alleging the dates of injury to be August 1991 through June 2, 1993. At the Regular Hearing, claimant requested modification of her date of accident, alleging accidental injury arising out of and in the course of her employment through June 30, 1993. During claimant's testimony she provided no information regarding what, if any, modifications or changes occurred on June 30, 1993. There was no indication from claimant that her condition stabilized or that she suffered any type of traumatic onset on or about June 30, 1993. The Administrative Law Judge's finding that claimant suffered from a series of injuries culminating on June 30, 1993 is not supported by a preponderance of the credible evidence.

In considering the date of accident as an issue, the Appeals Board must look to two recent Kansas Court of Appeals cases for direction. In Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), the Court of Appeals established a bright line rule for injury dates in carpal tunnel microtrauma situations. The Court in Berry concluded in bilateral carpal tunnel syndrome situations, the date of "occurrence" or date of "injury" relates to the last day on which the claimant worked. In finding that carpal tunnel syndrome cannot logically be defined as either personal injury or occupational disease and due to the complexities of locating dates of injury in carpal tunnel situations, the date of injury or date of occurrence is deemed to be "the date on which claimant's condition became so painful and debilitating that he could no longer perform his job functions." *Id.* at 229.

The Appeals Board must also consider Condon v. Boeing, 21 Kan. App. 2d 580, 903 P.2d 775 (1995) where the Court of Appeals found the last day worked to not always apply to carpal tunnel or microtrauma injury situations. In Condon the Court of Appeals considered the impossibility of attempting to determine the exact time or date of an injury or injuries which have occurred over a period of time. The Court of Appeals again described microtrauma injuries as being hybrid conditions lying somewhere between personal injury caused by accident and occupational diseases. In Condon the claimant's last day worked was July 6, 1993. However, additionally the claimant suffered increased injuries from the repetitive work activities and reported these additional onsets to her treating physician Dr. Paul Lesko on June 15, 1993. Notably, Condon testified that her symptoms did not worsen after June 15, 1993.

The Appeals Court in Condon found June 15, 1993 as an appropriate date of injury being the date on which claimant suffered additional injuries and reported these injuries to her treating doctor. The work subsequent to July 1, 1993 was not found to be a significantly contributing factor.

In the present case claimant was referred to Dr. Ernest R. Schlachter on June 18, 1993. On that date Dr. Schlachter modified her job duties and suggested certain

restrictions that claimant should follow. While claimant did continue working through July 2, 1993, it does not appear from the record that claimant's activities between June 18 and July 2, 1993 exacerbated her upper extremity injuries.

The Appeals Board, in analyzing both Berry and Condon, finds that the logic of Condon more directly relates to these factual circumstances and finds claimant's date of injury to have occurred as a series of microtraumas through June 18, 1993.

The evidence further supports that claimant advised both respondent's first aid department and her crew chief that she was having difficulties in her bilateral upper extremities and into her shoulders in June 1993. In finding an accident date of June 18, 1993, the Appeals Board must also logically find that claimant provided notice to respondent within ten days of the date of accident, as is required by K.S.A. 1992 Supp. 44-520.

With regard to the nature and extent of claimant's injury and/or disability, the Appeals Board must look to K.S.A. 1992 Supp. 44-510e(a) which states in part:

"The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation, except that in any event the extent of permanent partial general disability shall not be less than [the] percentage of functional impairment."

In reviewing the Award of the Special Administrative Law Judge, the Appeals Board finds that the Award properly sets out both findings of fact and conclusions of law in some detail regarding claimant's permanent partial general body disability and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Special Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the nature and extent of claimant's injury and/or disability. In analyzing the medical reports of Dr. Schlachter and Dr. J. Mark Melhorn and the work disability opinions of Patty Perdaris and Jerry Hardin, the Special Administrative Law Judge has found that claimant has suffered a 45 percent permanent partial general body work disability. The Appeals Board therefore finds, with the exception of the modification of claimant's date of injury, that the Award of the Special Administrative Law Judge in this matter is appropriate.

K.S.A. 1992 Supp. 44-510e(a) states in part:

"There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury."

In establishing a date of injury of June 18, 1993, the Appeals Board also finds that claimant is entitled to functional impairment only through July 2, 1993, her last date worked with respondent. Thereafter, claimant would be entitled to the appropriate work disability as set forth in the Award of the Special Administrative Law Judge. See Lee v. Boeing Co. - Wichita, 21 Kan. App. 2d 365, 899 P.2d 516 (1995). In reviewing the opinions of Dr. Melhorn and Dr. Schlachter, the Appeals Board finds that Dr. Melhorn's 8 percent

whole body functional impairment and Dr. Schlachter's 16 percent whole body functional impairment are both supported by some evidence in the record. As neither opinion appears to carry more weight than the other, the Appeals Board finds claimant has suffered a 12 percent permanent partial functional impairment for the period June 18, 1993 through July 2, 1993. Thereafter, claimant is entitled to a 45 percent permanent partial general body disability as a result of the injuries occurring through June 18, 1993.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated December 5, 1994 should be, and hereby is, affirmed in part and modified in part and the claimant, Diana L. Walker, is granted an award against respondent, Beech Aircraft Corporation, a qualified self-insured, and the Kansas Workers Compensation Fund for an injury occurring on June 18, 1993 for a 12% functional impairment through July 2, 1993, followed thereafter by a 45% permanent partial general body disability.

Claimant is entitled to 12 weeks temporary total disability compensation at the rate of \$299.00 per week in the sum of \$3,588.00, followed by 2 weeks permanent partial functional impairment at the rate of \$40.26 per week, in the amount of \$80.52, followed thereafter by 401 weeks permanent partial general body disability at the rate of \$150.96 per week totaling \$60,534.96, for a total award of \$64,203.48.

As of May 3, 1996, claimant would be entitled to 12 weeks temporary total disability compensation at the rate of \$299.00 per week totaling \$3,588.00, followed thereafter by 2 weeks functional disability at the rate of \$40.26 in the amount of \$80.52, followed thereafter by 136 weeks permanent partial general body disability at the rate of \$150.96 in the amount of \$20,530.56 for a total due and owing of \$24,199.08, which is due and owing in one lump sum minus amounts previously paid. Thereafter, the remaining balance of \$40,004.40 is to be paid for 265 weeks at the rate \$150.96 per week, until fully paid or further order of the Director.

Future medical will be awarded upon proper application to and approval by the Director.

Unauthorized medical expense up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of an itemized statement verifying same.

All compensation, medical expenses and costs associated with this award are to be borne one-half by the respondent and one-half by the Kansas Workers Compensation Fund.

Claimant's attorney fee contract is herein approved insofar as it is not in contravention to K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are hereby assessed 50 percent to the respondent and 50 percent to the Kansas Workers Compensation Fund to be paid as follows:

William F. Morrissey  
Special Administrative Law Judge

\$150.00

Barber & Associates	
Transcript of Regular Hearing	\$239.00
Deposition of Patty Perdaris (5-12-94)	\$155.00
Deposition of J. Mark Melhorn, M.D.	\$179.00
Deposition of Patty Perdaris (6-17-94)	\$165.60
Deposition of Dale Walker	\$ 97.00
Kelley, York & Associates	
Deposition of Ernest R. Schlachter, M.D.	\$265.09
Deposition of Jerry Hardin	\$272.86

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1996.

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BOARD MEMBER

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c:     James B. Zongker, Wichita, KS  
       Jeff C. Spahn, Jr., Wichita, KS  
       Andrew Busch, Wichita, KS  
       William F. Morrissey, Special Administrative Law Judge  
       John D. Clark, Administrative Law Judge  
       Philip S. Harness, Director